IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 298 OF 2005

IN

WRIT PETITION NO. 6459 OF 2005

ASHRAF JALALUDDIN & ANR. .. APPELLANTS

Versus

THE PRESS TRUST OF INDIA LTD. & ORS... RESPONDENTS

Ms. Jane Cox for appellants

Mr. J.P. Cama with B.K. Ashok and Smt. Sonia Sunil for respondents 1 and 2.

CORAM:-SMT. RANJANA DESAI &

D.B. BHOSALE, JJ.

DATED:-22/2/2006

P.C.

. The appellant has challenged order dated 20/12/05 passed by the learned Single Judge whereby the writ petition filed challenging the order dated 29/8/05 passed by the Industrial Court, Mumbai, was dismissed in limine. The Industrial Court had dismissed the complaint filed by the appellant challenging his transfer to Rajkot vide transfer order dated 7/10/2004 on the ground of malafides.

2. We have heard Ms. Jane Cox, learned counsel appearing for the appellant at considerable length. She contended that there is sufficient evidence on record to indicate that transfer of the appellant was malafide. According to the learned counsel the Industrial Court did not appreciate the evidence in its proper perspective and wrongly held that malafides were not proved.

3. The learned counsel pointed out that one Shri S. P. Iyer was also similarly transferred and this court confirmed the order of the Industrial Court staying the said transfer. The learned counsel urged that the case of the present appellant is on par with that of Shri S. P. Iyer. She then drew our attention to the evidence on record and also certain letters which according to her indicate that at Rajkot there was no work for junior technician. She particularly relied on leter dated 10/8/2004 which is annexed as Exhibit "F" to the petition in which the company has expressed that there was need of technician at Rajkot to lookafter the technical matters since the Senior Technician Mr. Arjunbhai Visodia had retired. The learned counsel urged that inasmuch as the appellant is a junior technician, he could

not have been transferred to Rajkot to look after the technical matters which could only be done by Senior Technician. The learned counsel urged that the learned Single Judge has failed to appreciate this aspect of the matter. We are unable to agree with the learned counsel.

4. In our opinion S. P. Iyer's case cannot be equated with the case of the appellant. The Industrial Court has properly dealt with this aspect of the matter. It appears that the federation of General Manager PTI had sent a letter which contained the names of 12 employees including that Mr. S. P. Iyer in respect of whom the federation had resolved that the management should immediately take suitable action. Admittedly the name of the appellant was not in that list. The transfer order of Mr. Iyer was issued asfar back as in 2002. We are, therefore, unable to come to a conclusion that the case of the present appellant is similar to that of S.P. Iyer. The appellant cannot take advantage of this court's order in S. P. Iyer's case as there is no parity between the two cases.

5. In our opinion, the transfer being the

incidence of service, the management can certainly transfer even a junior technician, if it feels that for the coordination work he is a fit person. Such decisions must entirely be left with the management and in the absence of any evidence of malafides it is not possible for the court to interfere with them. We are of the view that the respondent has not proved malafides. In our opinion, there is no merit in the appeal. Appeal is rejected. In view of the rejection of the appeal, Civil Application No. 339 of 2005 does not survive and is disposed of as such.

6. At this stage the learned counsel for the appellant says that two weeks' time may be granted to report to the duty. Accordingly two weeks' time is granted to the appellant to report to the duty.

(SMT. RANJANA DESAI,J.)

(D. B. BHOSALE, J.)